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11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 SANG CHURL PAIK,

18 Defendants.

19 Case No. 5:18-cr-0283-GW

20 Hon. George H. Wu

21 **DEFENDANT SANG CHURL
22 PAIK'S SENTENCING POSITION
23 BRIEF**

24 Hearing Information:

25 Date: May 9, 2022

26 Time: 8:00 a.m.

27 Place: Courtroom 9D
28 United States District Court
350 W. 1st Street
Los Angeles, CA 90012

1 **I. INTRODUCTION**

2 Sang Churl Paik is a 56-year-old father of 5 children (including two minors) who
3 came to this country with his family 43 years ago seeking better education and opportunities
4 than were available in his native South Korea. His family had little income, with both his
5 parents working two jobs each to make ends meet. No one in his family spoke English.
6 Through his determination and will, Paik eventually graduated from the University of
7 California at Irvine, obtained a DDS from UCLA School of Dentistry, and became a U.S.
8 citizen and successful dentist. Along the way, he consistently helped others, including by
9 serving as the “Director For Missions” at his church, regularly travelling throughout the
10 world performing missionary work including community development, humanitarian work,
11 dental treatment, and other medical treatment.

12 Regrettably, years ago Paik also made an error in judgment that now brings him
13 before the Court. Paik acknowledges the seriousness of his conduct and takes full
14 responsibility for it. He has also attempted to make things right. He has cooperated fully
15 with the government, which was able to obtain a conviction against his former friend, Dr.
16 Donald Lee. *See United States v. Donald Woo Lee*, Case No. 16-CR-415-GW (C.D. Cal.).

17 On December 20, 2018, Paik pled guilty to a single-count information charging him
18 with violation of 18 U.S.C. § 152(3). Paik admitted that he submitted a declaration
19 containing false statements in bankruptcy proceedings commenced by Dr. Lee, by falsely
20 representing the circumstances surrounding a payment received from Dr. Lee and the source
21 of funds he used to pay the bankruptcy trustee as part of a settlement agreement relating to
22 that payment.

23 The base offense level for this offense is 14, to which the government and Paik have
24 agreed. The Presentence Investigation Report (“PSR”) submitted by the United States
25 Probation Office & Pretrial Services (“Probation”) correctly credited Paik with a 2-level
26 offense reduction based upon his acceptance of responsibility, and a 2-level offense
27 reduction based on Paik’s minor role in the offense, for a total offense level of 10.

1 The parties agree on Paik's appropriate total offense level. The parties further agree
 2 that Paik's total offense level results in an advisory sentencing guideline of 6-12 months
 3 and that the Court should impose a non-custodial sentence. Probation concurs and
 4 recommends the same in the PSR. Additionally, Paik has provided the government with
 5 substantial assistance in its prosecution of Dr. Lee, and the government has sought a further
 6 downward departure pursuant to Section 5K1.1, which should result in a 5-level offense
 7 level reduction and guideline range of 0-6 months. And the government and Paik also agree
 8 that no further supervision is necessary.

9 Accordingly, and for the reasons set forth more fully below and in the government's
 10 Sentencing Memorandum filed on April 25, 2022, the Court should impose a non-custodial
 11 sentence on Paik with no supervised release, impose no fine, and the mandatory \$100
 12 special assessment.

13 **II. PROCEDURAL AND FACTUAL BACKGROUND**

14 Paik was charged with a single count information for making a false declaration in
 15 bankruptcy proceedings initiated by Dr. Lee. *See* Dkt. No. 1 (Information). According to
 16 the Information, an agent for the Court-appointed trustee in the bankruptcy proceedings
 17 determined that one of the debtors in the bankruptcy case reported making a payment of
 18 \$252,000, which Dr. Lee claimed was a purchase of catheters made on the "black market."
 19 *Id.* at 2-3. The Information further alleges that the bankruptcy trustee determined that the
 20 \$252,000 payment was not a payment for catheters, but rather a payment made to Paik,
 21 which Paik used to make an investment on behalf of Dr. Lee. *Id.* at 3.

22 The bankruptcy trustee believed this was an avoidable transfer under 11 U.S.C. § 549
 23 and negotiated a settlement with Dr. Lee and Paik. *Id.* Pursuant to that settlement, among
 24 other things, Paik agreed to remit \$166,000 to the bankruptcy estate, and Dr. Lee agreed to
 25 remit \$86,000 to the bankruptcy estate. Dr. Lee and Paik also agreed to provide declarations
 26 under penalty of perjury disclosing the source of their settlement payments. *Id.* The
 27 Information further alleges that Paik thereafter submitted a declaration in the bankruptcy
 28 proceedings containing knowingly and materially false statements under penalty of perjury

1 regarding the source of funds for his settlement payment to the bankruptcy trustee. *Id.* at 4.
 2 In particular, the declaration submitted by Paik asserted that he obtained a loan from his
 3 brother to pay the bankruptcy trustee \$166,000 and that none of the settlement proceeds
 4 came from Dr. Lee, his wife, or his related corporate entities.

5 As described in the government's Sentencing Memorandum, once Paik was
 6 approached by law enforcement, he quickly retained counsel and made a proffer to the
 7 government on February 2, 2018. Paik admitted during that proffer that the statements in
 8 his declaration concerning the circumstances of the transfer he received and payment he
 9 made to settle with the bankruptcy trustee were false and provided the government with
 10 information concerning Dr. Lee's role with respect to the same.

11 On September 13, 2018, prior to the filing of the Information, Paik entered a Plea
 12 Agreement with the government. *See* Dkt. No. 13. On December 20, 2018, Paik entered a
 13 guilty plea pursuant to the Plea Agreement, which the Court accepted. *See* Dkt. No. 24.

14 The government separately indicted Dr. Lee in connection with the same underlying
 15 facts as alleged in the information and healthcare fraud, among other crimes. *See U.S. v.*
 16 *Lee*, Case No. 2:16-cr-004150-GW, Dkt. No. 38 (First Superseding Indictment). As
 17 acknowledged by the government, the information Paik provided assisted the government
 18 in its prosecution of Dr. Lee. That case went to trial in October of 2019. The jury convicted
 19 Dr. Lee on all counts that were tried. *See id.* at Dkt. No. 160 at 1478-79. While Paik met
 20 with the government and would have testified at trial as a government witness, Dr. Lee
 21 thereafter entered a guilty plea with respect to Count 9 of his Indictment, which charged
 22 him with violating 18 U.S.C. § 152(d) for submitting a false declaration concerning the
 23 source of settlement payments made to the bankruptcy trustee. *See id.* at 17-20 (SSI); *see also*
 24 Dkt. No. 167 (Minutes of Change of Plea Hearing).

25 **III. A NON-CUSTODIAL SENTENCE IS APPROPRIATE**

26 **A. Legal standard.**

27 In determining the appropriate sentence, the Court is required to consider all of the
 28 statutory sentencing factors set forth in 18 U.S.C. § 3553, including, among other factors:

1 the history and characteristics of the offender; the nature and circumstances of the offense;
 2 the need to reflect the seriousness of the offense, promote respect for law, provide for just
 3 punishment, and afford adequate deterrence; and the need to provide the defendant with
 4 needed education, vocational training, medical care or other correctional treatment. 18
 5 U.S.C. § 3553(a); *United States v. Booker*, 543 U.S. 220 (2005). The Sentencing Guidelines
 6 are but one of the many factors for the court to consider, and “§ 3553(a)(3) directs the judge
 7 to consider sentences other than imprisonment.” *United States v. Gall*, 552 U.S. 38 (2007);
 8 *Gall*, 552 U.S. at 59. The Court must impose a sentence that is “sufficient but not greater
 9 than necessary” to achieve the statutory purposes of sentencing. 18 U.S.C. § 3553(a).

10 **B. The factors in 18 U.S.C. § 3553 favor leniency.**

11 **1. Paik’s history and circumstances.**

12 **a. Paik came to America with his family as child and was able
 13 to realize the “American Dream.”**

14 Paik was born in Seoul, South Korea, in 1966. He came to the United States with his
 15 father, mother, brother, and sister when he was 13 years old. His father and mother were
 16 both teachers in Korea (chemistry and math, respectively), but worked as a wholesale food
 17 vendor and factory work, respectively, in the United States. *See* PSR ¶ 50-52. Paik’s parents
 18 brought the family to the United States in the hopes of pursuing more education and work
 19 opportunities. *Id.* ¶ 53.

20 Paik’s family struggled upon arrival in the United States. His parents each worked
 21 two jobs to support their children. *Id.* ¶ 54. No one in his family spoke English. *Id.* Paik was
 22 immediately enrolled in middle school where he began taking English as a Second
 23 Language (ESL) classes. *Id.*

24 Through hard work and perseverance, Paik eventually graduated from high school
 25 and enrolled at the University of California at Los Angeles (UCLA) in 1984. He attended
 26 UCLA as an undergraduate for 3 years, and then transferred to the University of California
 27 at Irvine, where he attended as an undergraduate for the next three years. PSR ¶ 67-68. After
 28 taking time off school, Paik attended UCLA School of Dentistry from 1991 to 1994, when

1 he graduated with his DDS (Doctor of Dental Surgery). He has been a licensed dentist since
 2 then. *Id.* ¶ 70.

3 Since 2005, Paik has worked at Lee and Paik, DDS, Inc., which he opened together
 4 with a Dr. Lee.¹ Paik eventually gained ownership over the entire practice. In 2015, he sold
 5 the business to Dr. Kwon and became an employee of his. PSR ¶ 74. Paik continues to work
 6 full-time at the practice earning a modest income. *Id.*

7 Paik has been married to his wife for nearly 17 years. They have five children, two
 8 of whom are minors. Paik has a very close relationship with his children, the oldest of whom
 9 has followed Paik's path into dentistry. *See* PSR ¶¶ 56-57. His other two adult children
 10 attend college studying computer science, while his two minor children attend private
 11 school. *Id.* ¶ 57.

12 **b. Paik has a history of helping others.**

13 Paik's difficult circumstances in coming to this country as a child with limited
 14 resources caused him to always work hard, never take things for granted, focus on family,
 15 and have an abiding desire to help others whenever he can. For example, Paik is an active
 16 member of his church, where he holds the position of "Director For Missions." PSR ¶ 71.
 17 As part of this position, Paik travels regularly to other countries to perform missionary
 18 work. This missionary work includes, among other things, community development,
 19 humanitarian work, dental treatment, and other medical treatment. He is also a member of
 20 Interserve USA, which is an international, interdenominational, overseas-focused agency
 21 providing services to poor and marginalized people across the globe.

22 **c. Paik is unlikely to reoffend.**

23 Paik's acceptance of responsibility and cooperation with the government underscore
 24 his remorse and the fact that he is highly unlikely to reoffend. Additionally, the recidivism
 25 rate is only 9.8% for those legally married, 6.5% for those with college or advanced degrees
 26 at the time of the offense, and just 6.2% for those over the age of 50 at the time of
 27

28 ¹ This is not the same Dr. Lee as involved in the bankruptcy proceeding and this offense.

1 sentencing. *See* U.S. Sentencing Commission, *Measuring Recidivism: The Criminal*
 2 *History of Computation of the Federal Sentencing Guidelines*, at 28-29 (May 2004).² For
 3 someone like Paik sharing all these traits, the risk of reoffending is likely even lower.

4 **2. Nature of the offense.**

5 On September 24, 2013, Dr. Lee and his wife filed and caused to be filed a bankruptcy
 6 petition under Title 11 of the United States Code (the “Bankruptcy Code”) on behalf of
 7 themselves. On November 18, 2013, Dr. Lee filed and caused to be filed a bankruptcy
 8 petition under the Bankruptcy Code for his medical practice, Prime Partners Medical Group
 9 (“Prime Partners”). On or about May 2014, the two bankruptcy cases were substantively
 10 consolidated.

11 In or around July 2014, Paik received a payment of \$252,000 from Prime Partners.
 12 The bankruptcy trustee negotiated a settlement with Paik and Dr. Lee whereby Dr. Lee
 13 agreed to remit \$86,000 and Paik agreed to remit \$166,000 to the bankruptcy trustee, and
 14 both Paik and Dr. Lee agreed to submit declarations under penalty of perjury disclosing the
 15 source of their respective payments.

16 Paik submitted a declaration in the bankruptcy case. Paik’s declaration stated, among
 17 other things, that his cousin “told me that he knew various individuals who were in the
 18 business of selling catheters to vein clinics . . . [m]y cousin also happened to owe me
 19 approximately \$240,000. I called [my cousin] and asked if he could repay his debt to me by
 20 purchasing the catheters on behalf of [Prime Partners] and delivering them to [Primer
 21 Partners]. [My cousin] agreed to this arrangement . . . I then contacted Dr. Lee, informed
 22 him of the agreement that I had reached with [my cousin], and asked him if he wanted the
 23 catheters. He did. So I asked Dr. Lee to write me a \$252,000 check to cover the cost of the
 24 catheters.” Paik’s declaration further stated that “I obtained a loan from my brother [] to
 25 pay the Trustee \$166,000 required under the settlement.” In fact, Paik had not discussed
 26 catheters with his cousin or arranged the purchase of catheters through a cousin on behalf
 27

28 ² Available at <https://www.ussc.gov/research/research-publications/measuring-recidivism-criminal-history-computation-federal-sentencing-guidelines> (last visited January 5, 2022).

1 of Dr. Lee in order to pay a debt, and Paik's brother did not loan him money; rather, Dr.
2 Lee remitted and caused to be remitted cashiers' checks amounting to \$166,000 to Paik's
3 brother, which were then deposited and remitted to Paik, which he used to fund his payment
4 to the bankruptcy trustee.

5 Paik acknowledges that he should not have agreed to submit a declaration that did
6 not accurately describe the circumstances surrounding his initial receipt of payment from
7 Prime Partners and failed to accurately disclose the source of the settlement payment he
8 made to the bankruptcy trustee. While Dr. Lee asked Paik to make these false statements
9 and Paik agreed to do so to help his friend, Paik acknowledges this was wrong and he should
10 not have agreed to do it.

11 **3. Just punishment.**

12 Here, a non-custodial sentence with no further supervision is "sufficient, but not
13 greater than necessary" to achieve the goals of sentencing. Certainly, a custodial sentence
14 is not necessary. Paik is an upstanding, generous, family-centric person, who here engaged
15 in conduct that he certainly is not likely to repeat. Paik understands the gravity of his
16 offense and the errors in judgment he made. But putting Paik in prison would undermine
17 the goals of sentencing because it would disrupt his familial, social, and professional
18 networks, and disregard Paik's nature and characteristics as an otherwise responsible, law-
19 abiding citizen who has accepted responsibility for his conduct and fully cooperated with
20 the government in its investigation and prosecution of Dr. Lee. It would also hinder Paik's
21 ability to assist his children with their education, his ability to practice his profession, and
22 his ability to continue his missionary work.

23 Additionally, supervised release here is not necessary to achieve the goals of
24 sentencing. Probation recommends a two-year term of supervised release. And while that
25 recommendation is certainly more reasonable than a term of custody, there is no articulation
26 as to what purpose supervised release would serve in this case, or how it would promote the
27 goals of sentencing. As Probation has acknowledged, "[w]ith the exception of this incident,
28 which occurred four years ago, Paik has been living as a law abiding citizen for decades.

1 He is a highly successful dentist and family man who is the primary income earner for his
 2 family.” Paik has been on pretrial supervision for over three years, without incident and in
 3 full compliance. There is no need for supervised release as part of Paik’s sentence to punish
 4 Paik.

5 Nor is there a need for a two-year term of probation to promote respect for the law;
 6 Paik has shown his respect for the law by accepting responsibility for his offense and
 7 cooperating fully with the government. Paik participated in an extensive proffer session
 8 with the government prior to the filing of the Information and was prepared to testify at Dr.
 9 Lee’s trial but for the Court’s severance of the bankruptcy fraud counts from Dr. Lee’s
 10 health care fraud counts (and as noted above, Dr. Lee pled guilty to the bankruptcy fraud
 11 count after his health care fraud conviction at trial). Nor is there a need to deter Paik, a 56-
 12 year-old professional and father of 5 with no relevant criminal history and low probability
 13 of reoffending based on his characteristics. Finally, there is no need to burden the Probation
 14 Office by asking it to provide Paik with “needed education, vocational training, medical
 15 care, or other correctional treatment.” 18 U.S.C. § 3553(a)(2)(D). The limited resources
 16 of the Probation Office would be better directed elsewhere. Furthermore, as the
 17 government’s sentencing position acknowledges, Paik has been on pretrial supervision for
 18 several years without incident. There is no indication that requiring additional supervision
 19 is necessary to achieve the goals of sentencing in this case.

20 Balanced against these considerations is the “seriousness of the offense,” 18 U.S.C.
 21 § 3553(a)(2)(A). It is true that Paik submitted a false declaration in the bankruptcy
 22 proceedings. But as noted in the PSR, there were no victims harmed by his acts. Further,
 23 Paik did not benefit from his conduct. While serious, under the circumstances here a felony
 24 conviction and the lifelong collateral consequences that go with it is more than enough to
 25 punish Paik for his conduct.

26 **C. The Sentencing Guidelines call for a non-custodial sentence.**

27 Paik and the government agree that the appropriate base offense level is 14. *See* Plea
 28 Agreement, at ¶ 16; *see also* U.S.S.G. § 2J1.3. Because Paik accepted responsibility for his

1 conduct the Court should apply a two-level reduction in the offense level. Additionally,
2 because of Paik's minor role in the offense, the Court should apply an additional two-level
3 reduction in the offense level, yielding an offense level of 10. The advisory sentencing range
4 is 6-12 months and falls within Zone B of the sentencing table.³

5 **1. The Court should apply a 2-level offense level reduction due to
6 Paik's acceptance of responsibility.**

7 The Guidelines make clear that “[e]ntry of a plea of guilty prior to the commencement
8 of trial combined with truthfully admitting the conduct comprising the offense of
9 conviction, and truthfully admitting or not falsely denying any additional relevant conduct
10 for which [the defendant] is accountable under § 1B1.3 . . . will constitute significant
11 evidence of acceptance of responsibility . . .” U.S.S.G. § 3E1.1, cmt. (n. 3). Paik fully
12 accepted responsibility here by acknowledging his conduct and entering a plea agreement
13 with the government and guilty plea with the Court. *See* Dkt. Nos. 13 (Plea Agreement) &
14 (Minute Order Following Change of Plea Hearing).

15 **2. The Court should apply a 2-level offense level reduction because
16 Paik was a minor participant in the offense.**

17 The Guidelines provide that the offense level should be decreased by 2 levels “[i]f
18 the defendant was a minor participant” in the criminal activity. U.S.S.G. § 3B1.2(b). This
19 adjustment applies to a defendant “who is less culpable than most other participants in the
20 criminal activity, but whose role could not be described as minimal.” *Id.* at Comm. 5. Here,
21 Paik is clearly less culpable than the other primary participant in the offense, namely Dr.
22 Lee. While Paik is responsible for making a false statement in a declaration related to Dr.
23 Lee's bankruptcy proceeding, the declaration related to Dr. Lee's unauthorized post-
24 bankruptcy transfer of funds made to invest in a restricted stock and the repayment of these
25 funds to the bankruptcy estate with estate money. Paik submitted the declaration at the

26
27 ³ “If the defendant is a nonviolent first offender and the applicable guideline range is in
28 Zone A or B of the Sentencing Table, the court should consider imposing a sentence other
than a sentence of imprisonment.” U.S.S.G. § 5C1.1, cmt. n. 4.

1 request of and as a favor to Dr. Lee, and did not benefit financially at all from the offense
2 conduct. The totality of the conduct involved establishes that Paik played a minor role in
3 the offense.

4 Accordingly, when applying the acceptance of responsibility and mitigating role
5 adjustments, the applicable adjusted offense level should be 10. The advisory guideline
6 range is 6-12 months and falls within Zone B of the Sentencing Table.

7 **D. The Court should apply a 5-level offense level reduction considering
8 Paik's substantial assistance to the government.**

9 In addition to the foregoing, the Court should grant the government's motion for a
10 downward departure pursuant to § 5K1.1. As explained above and detailed in the
11 government's sentencing position memorandum, Paik provided the government with
12 substantial assistance in its prosecution of Dr. Lee, and was prepared to testify at Dr. Lee's
13 trial. This information assisted the government obtain a conviction of Dr. Lee; indeed, after
14 going to trial on the other counts against him, Dr. Lee pled guilty to Count 9 against him,
15 which concerned the false statements in the bankruptcy proceeding.

16 Accordingly, the Court should apply a 5-level offense level reduction when
17 sentencing Paik, which would result in a total offense level of 5. The advisory guideline
18 range for this offense level is 0-6 months and falls within Zone A of the Sentencing Table.

19 **E. Paik should not receive any fine as part of his sentence.**

20 The Court should not assess Paik with a fine as part of his sentence. The PSR
21 recommends that the Court impose a fine of \$2,000 as part of Paik's sentence based on his
22 financial condition. Probation's recommendation of a fine of \$2,000 is premised upon
23 expected costs to the government of any term of probation, or term of imprisonment and
24 term of supervised release, potentially including drug and alcohol treatment, electronic
25 monitoring, and/or contract confinement costs. *See* PSR ¶ 105. But the government and
26 Paik agree that that Paik should not be incarcerated and should not be subject to supervised
27 release. Accordingly, imposition of a fine as part of Paik's sentence is unwarranted.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should impose a non-custodial sentence on Paik
3 with no supervised release, impose no fine, and the mandatory \$100 special assessment.

4

5 Dated: May 2, 2022

BIENERT KATZMAN
LITTRELL WILLIAMS LLP

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7 By: 

8 Steven Jay Katzman
Anthony R. Bisconti
9 Attorneys for Defendant Sang Churl Paik

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CERTIFICATE OF SERVICE

I declare that I am a citizen of the United States and I am a resident and employed in Orange County, California; that my business address is 601 W. 5th Street, Ste. 720, Los Angeles, California 90071; that I am over the age of 18 and not a party to the above-entitled action.

I am employed by a member of the United States District Court for the Central District of California, and at whose direction I caused service of the foregoing document entitled **DEFENDANT SANG CHURL PAIK'S SENTENCING POSITION BRIEF** on all interested parties as follows:

United States Probation & Pretrial Services, Los Angeles Office
Mairi Cervantes
Mairi.Cervantes@cacp.uscourts.gov

BY E-MAIL: I transmitted a PDF version of the foregoing document by electronic mail via egarcia@bklwlaw.com to the party(s) identified above using the email address(es) indicated.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 2, 2022 at Los Angeles, California.



Elizabeth Garcia